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Some With Histories of Mental Illness Petition to Get Their Gun Rights Back

By **MICHAEL LUO**

PULASKI, Va. — In May 2009, Sam French hit bottom, once again. A relative found him face down in his carport “talking gibberish,” according to court records. He later told medical personnel that he had been conversing with a bear in his backyard and hearing voices. His family figured he had gone off his medication for bipolar disorder, and a judge ordered him involuntarily committed — the fourth time in five years he had been hospitalized by court order.

When Mr. French’s daughter discovered that her father’s commitment meant it was illegal for him to have firearms, she and her husband removed his cache of 15 long guns and three handguns, and kept them after Mr. French was released in January 2010 on a new regime of mood-stabilizing drugs.

Ten months later, he appeared in General District Court — the body that handles small claims and traffic infractions — to ask a judge to restore his gun rights. After a brief hearing, in which Mr. French’s lengthy history of relapses never came up, he walked out with an order reinstating his right to possess firearms.

The next day, Mr. French retrieved his guns.

“The judge didn’t ask me a whole lot,” said Mr. French, now 62. “He just said: ‘How was I doing? Was I taking my medicine like I was supposed to?’ I said, ‘Yes, sir.’ ”

Across the country, states are increasingly allowing people like Mr. French, who lost their firearm rights because of mental illness, to petition to have them restored.

A handful of states have had such restoration laws on their books for some time, but with little notice, more than 20 states have passed similar measures since 2008. This surge can be traced to a law passed by Congress after the 2007 massacre at Virginia Tech that was actually meant to make it harder for people with mental illness to get guns.

As a condition of its support for the measure, the [National Rifle Association](#) extracted a concession: the inclusion of a mechanism for restoring firearms rights to those who lost them for mental health reasons.

The intent of these state laws is to enable people to regain the right to buy and possess firearms if it is determined that they are not a threat to public safety. But an examination of restoration procedures across the country, along with dozens of cases, shows that the process for making that determination is governed in many places by vague standards and few specific requirements.

States have mostly entrusted these decisions to judges, who are often ill-equipped to conduct investigations from the bench. Many seemed willing to simply give petitioners the benefit of the doubt. The results often seem haphazard.

At least a few hundred people with histories of mental health issues already get their gun rights back each year. The number promises to grow, since most of the new state laws are just beginning to take effect. And in November, the Department of Veterans Affairs responded to the federal legislation by establishing a rights restoration process for more than 100,000 veterans who have lost their gun privileges after being designated mentally incompetent by the agency.

The issue goes to the heart of the nation's complicated relationship with guns, testing the delicate balance between the need to safeguard the public and the dictates of what the Supreme Court has proclaimed to be a fundamental constitutional right.

Mike Fleenor, the commonwealth's attorney here in Pulaski County, whose office opposed restoring Mr. French's rights, worries that the balance is being thrown off by weak standards.

"I think that reasonable people can disagree about issues of the Second Amendment and gun control and things like that, but I don't believe that any reasonable person believes that a mentally ill person needs a firearm," Mr. Fleenor said. "The public has a right to be safe in their community."

In case after case examined by The New York Times, judges made decisions without important information about an applicant's mental health.

Larry Lamb, a Vietnam veteran from San Diego who has suffered from depression and post-traumatic stress disorder, lost his gun rights and his cache of weapons in 2006 when he was involuntarily hospitalized after his dog's death left him suicidal. A psychiatrist who examined

Mr. Lamb wrote that he “is extremely paranoid with a full-blown P.T.S.D., believing that he is still at war in the active military and he is a personal bodyguard of the president and many senators.”

In early 2008, a Superior Court judge in San Diego granted Mr. Lamb’s petition to have his firearms rights restored, after his psychologist testified that he was not dangerous. But the judge, without access to Mr. Lamb’s full medical history, was unaware of a crucial fact: the local Veterans Affairs hospital had placed a “red flag” on Mr. Lamb, barring him from the hospital grounds because he was perceived to be a threat to personnel there.

The spread of these restoration laws is especially striking against the backdrop of the [shooting](#) of Representative Gabrielle Giffords of Arizona and others in Tucson early this year by a suspect who [has been declared mentally incompetent to stand trial](#) — a case that spotlighted anew the link between mental illness and violence.

Supporters of gun rights and mental health advocates point out that a vast majority of people with mental illness are not violent. At the same time, though, a variety of studies have found that people with serious mental illness are more prone to violence than the general population.

The difficulty of assessing risk emerges in places like Los Angeles, where the Superior Court conducts a relatively thorough review of firearms rights requests. The Times found multiple instances over the last decade in which people who won back their gun rights went on to be charged with or convicted of violent or gun-related crimes, including spousal battery, negligent discharge of a firearm or assault with a firearm.

Then there are the nightmare cases — like that of Ryan Anthony, 35, a former Emmy Award-winning animator at Disney who was involuntarily hospitalized in mid-2001 after losing his job and separating from his wife. Mr. Anthony filed a petition to get back his gun rights in early 2002, telling a court-appointed psychiatrist that he wanted to go skeet shooting.

A few weeks after the court granted his petition, Mr. Anthony bought a Remington 870 12-gauge shotgun, holed up in a Holiday Inn in Burbank, Calif., and committed suicide.

An N.R.A. Victory

The galvanizing revelation for gun-control advocates after the Virginia Tech massacre, the worst mass shooting in American history, was that the gunman, [Seung-Hui Cho, should never have been able to buy the guns he used in the rampage.](#)

Two years earlier, a special justice declared Mr. Cho “an imminent danger to himself as a result of mental illness” and ordered him to outpatient treatment.

Under federal law, anyone involuntarily committed or adjudicated a “mental defective” is barred from buying or possessing firearms. But the prohibition is often toothless because many states do not share their mental health records with the F.B.I.’s National Instant Criminal Background Check System.

Mr. Cho’s case offered Representative Carolyn McCarthy, Democrat of New York, a chance to advance a stalled bill that she had sponsored several years earlier to improve reporting by states to the F.B.I. database.

Ms. McCarthy’s political career and commitment to gun control was born out of tragedy. In 1993, a deranged gunman opened fire on a commuter train on Long Island, killing six people, including her husband, and gravely injuring her son. After more than a decade working on the issue in Congress, however, she had little to show for it.

Ms. McCarthy said she was wiser after years of setbacks. “I don’t believe in introducing legislation that won’t go anywhere,” she said.

She joined forces with Representative John D. Dingell, a Michigan Democrat and former N.R.A. board member, who acted as a liaison with the gun lobby. The N.R.A. had long been interested in gun-rights restoration. It also wanted to help tens of thousands of veterans who lost their rights after being designated mentally incompetent and unable to handle their finances by the Department of Veterans Affairs.

“We don’t want to treat our soldiers as potential criminals because they’re struggling with the aftermath of dealing with their service,” said Chris Cox, the association’s chief lobbyist.

The gun lobby secured a broad provision in the legislation. The new law made money available to states to help improve their record sharing, but the provision pushed by the N.R.A. made it a prerequisite for states to establish a “relief from disability” program for people with histories of mental health issues to apply for the restoration of gun rights. The Veterans Affairs Department and other federal agencies were required to do the same.

Gun-control groups attacked the provisions. “You make one bad judgment, and you could have another Virginia Tech on your hands,” Kristen Rand, legislative director for the Violence Policy Center, said in an interview.

But the most prominent gun-control organization, the [Brady Campaign to Prevent Gun Violence](#), ultimately supported the bill. “She felt if she didn’t do this, it wasn’t going to proceed,” Paul Helmke, the group’s president, said of Ms. McCarthy. “An imperfect bill is better than no bill.”

Ms. McCarthy said her background as a nurse made her amenable to restoring someone’s rights, “if they could prove they are no longer mentally ill.”

After the bill became [law](#) in 2008, the N.R.A. began lobbying state lawmakers to keep requirements for petitioners to a minimum.

In Idaho, for example, a committee of law enforcement and mental health officials proposed requiring courts to make findings by “clear and convincing” evidence and mandating that petitioners have a recent mental health evaluation. But without the N.R.A.’s imprimatur, the legislation went nowhere.

Instead, a Republican state representative, Raúl R. Labrador, who is now a congressman, worked with the N.R.A. to draft a [bill](#), passed last year, that dropped the requirement for a mental health evaluation and lowered the standard of proof to a “preponderance of evidence.”

A few states have set stricter standards. In New York, decisions are made by mental health officials, and applicants must submit [a long list of documents](#), including five years’ worth of medical records and records of psychiatric and substance abuse treatment going back 20 years. State officials can also require applicants to undergo clinical evaluations and risk assessments.

So far, there has been only a trickle of petitions in states with new restoration laws. The statutes are not yet well known, and federal authorities have yet to certify many of the state programs, making them fully operational under federal law.

But the demand will almost certainly grow, given the experience of states with longer-standing restoration statutes. In California, for instance, judges restored gun rights to 180 people in 2010. At the federal level, the Veterans Affairs Department has already received more than 100 applications, of which 12 were processed and one was granted.

As for the original aim of Ms. McCarthy’s legislation, the reporting of mental health records by states to the F.B.I. database [remains woeful](#). The reasons vary, including privacy laws, technological challenges and inattention from state officials.

But one significant hurdle has been that only a handful of states have received the federal money to improve their reporting capabilities. Officials with the Bureau of Justice Statistics indicated that while 22 states applied for grants in 2009 and 2010, only [nine have gotten financing](#). Most of those that did not receive grants were rejected because they did not have certified restoration programs in place.

One State's Experience

Lawmakers in Virginia, the scene of Mr. Cho's rampage, were among the first to respond to the federal legislation by amending the state's existing restoration statute to reflect the new law. To restore firearms rights, judges must find that the petitioner "will not likely act in a manner dangerous to public safety" and that "the granting of the relief would not be contrary to the public interest." There are few specific standards or guidelines beyond that.

In 2010, judges in Virginia considered roughly 40 restoration applications and granted firearms rights under state law to 25 people — 14 who had been involuntarily committed, and 11 who had been the subjects of temporary detention orders and were voluntarily admitted for mental health treatment, according to figures from the Virginia Supreme Court and the State Police. In 2009, the courts restored rights to 21 people.

There is no central repository for cases heard around Virginia, but to get a picture of how the process works in one state, The Times obtained dozens of petitions and judges' orders, mainly from 2009 and 2010, along with supporting documentation, and interviewed petitioners, lawyers and judges. The hearings were often relatively brief, sometimes perfunctory, and judges had wide latitude in handling the petitions.

Teresa Hall, who had moved to Idaho, said she simply wrote a letter to Hampton General District Court explaining that her commitment several years earlier occurred when she was experiencing marital difficulties. To her shock, she got a judge's order granting her petition several days later in the mail.

"I was surprised it was that easy," Ms. Hall said.

Some judges insisted on seeing a doctor's note, but others did not.

In a typical case, Joshua St. Clair, who served in Iraq with the National Guard, got his gun rights back last year. About six months earlier, Mr. St. Clair, now 22, had heard a rattling at his gate. He said he "kind of blacked out" and the next thing he knew, he was pointing his M-4 assault

rifle at his friend's chest. That led to a temporary detention order, treatment for post-traumatic stress disorder and loss of his firearms rights.

He took a note from his psychiatrist to his restoration hearing, which he said "lasted maybe about five minutes," but he said the judge did not even ask to see it. The judge asked Mr. St. Clair's father a few questions and asked Mr. St. Clair himself whether he thought he should have his rights restored. He said, "Of course."

Often the doctors' recommendations came from general practitioners, not mental health professionals. The notes tended to be short, often just a few sentences.

In many cases, the hospitalizations occurred just a few months, or even weeks, earlier.

Bobby Bullion, 37, got his gun rights back about four months after he left a note for his wife and son that indicated he was considering suicide — his wife had told him she was divorcing him — and the police found him in his car with two loaded weapons. Mr. Bullion presented the judge with a letter from his psychiatrist endorsing the restoration.

Oran Greenway, 68, had his rights restored in August, just two months after he was involuntarily committed. The judge's restoration shocked Mr. Greenway's relatives, who said they had been worried for years about his mental stability. In an interview, he said he started taking Lexapro for depression several years ago. In 2005, he slammed a large branch on a neighbor's head during an argument, resulting in a conviction for assault and battery.

"Knowing what I know about Oran, I wouldn't let Oran have a gun," said Elizabeth Dequino, a cousin who lives up the road.

Even when a court-ordered commitment occurred years ago, the wisdom of restoring certain petitioners' firearms rights was open to question. David Neal Moon, 63, was involuntarily committed in 1995 after his struggles with schizoaffective bipolar disorder got so bad that he had threatened to commit suicide and was walking in circles around his house with a MAK-90 assault rifle, as if on guard duty, according to medical and court records and an interview with Cynthia Allison, who is now his ex-wife.

A psychiatrist's report described him threatening to "bash in the face of his wife" and ranting about getting his guns so he could "shoot everybody." It also mentions a violent hair-pulling episode with his wife.

He had not been committed since, but he had continued to struggle with his illness and was bad about taking his medication, Ms. Allison said.

In an interview, Mr. Moon insisted he took his medication and was not mentally ill. Yet he alluded to his phone being tapped by the State Police and “by maybe the Pentagon.”

His firearms hearing in early 2009 in Amherst General District Court, where Mr. Moon showed up in military camouflage, lasted “about eight minutes,” said Mr. Moon’s lawyer, Gregory Smith, adding that he did not recall presenting any recent medical evaluation.

Just over a month later, another judge granted Ms. Allison a protective order against her husband. The pair had split up, and Mr. Moon had been making veiled threats by phone and telling his children about demons in the walls, according to her court affidavit.

“The judge just sat there and listened to him talk,” Ms. Allison said. “I didn’t even say anything. If you listened to him talk, you could tell he’s as crazy as a [bedbug](#).”

Among those whose applications were denied, many were turned down for technical reasons, like filing in the wrong jurisdiction or failing to show up for a hearing.

In others cases — like one last year in Lynchburg in which the petitioner, Undreas Smith, submitted a letter explaining he had been struggling with recent deaths in his family — the judge ruled against the petitioner because he failed to provide documentation from a mental health provider.

In the case of James Tuckson Jr. of Harrisonburg, who was involuntarily committed in 2006 and applied in October to get back his gun rights, prosecutors said his multiple arrests probably played a significant role in the judge’s decision to deny Mr. Tuckson’s petition.

Presented with The Times’s findings, Richard Bonnie, the chairman of the Virginia Commission on Mental Health Law Reform, which was formed after the Virginia Tech shootings, expressed concerns about the restoration process, particularly the vagueness of the statute. Mr. Bonnie said the panel would begin collecting information on the petitions on a monthly basis to better evaluate how they were being handled.

“There is an ambiguity in the statute that we need to look at,” he said.

‘A Hole in the Process’

When Sam French, the man with bipolar disorder whose daughter removed his guns, appeared late last year in Pulaski General District Court, he presented his recent medical records. Progress notes over several months showed that his bipolar disorder and substance abuse were in “remission.”

Nevertheless, Bobby Lilly, an assistant commonwealth’s attorney, opposed the petition, partly because Mr. French’s latest update indicated he had expressed interest in lowering the dosage of his medication. Mr. French’s two most recent hospitalizations had come after he went off his medication.

Mr. Lilly was also worried because it had been less than a year since his release. “We didn’t have a demonstrated track record of being able to comply with whatever the mental health provider’s directives were,” Mr. Lilly said.

In fact, a few months later, in March, a judge at the circuit level — the higher court in Virginia — denied Mr. French’s application for a concealed weapons permit because a five-year wait after a psychiatric commitment is required for such a permit.

But there is no waiting period for the restoration of basic gun rights.

Mr. French’s case fell to Judge Royce Glenwood Lookabill, a genial presence on the bench since 2006. Judge Lookabill said he quizzed Mr. French about whether he had had any other episodes and whether he was taking his prescribed drugs.

“I was satisfied that he wasn’t a danger — again, subject to him taking his medication,” Judge Lookabill said in an interview.

The judge acknowledged, however, that he might have made a different decision had he been aware of Mr. French’s previous commitments, including one that came after he was arrested for public drunkenness and later allegedly assaulted two police officers. (The assault charges were dropped.) No one had checked a state database for his commitment history.

“It’s a hole in the process,” said Mr. Lilly, who added that his office had only limited access to such information.

Judge Lookabill suggested that the process belonged in a higher court and should be made more adversarial. “I would feel a lot more comfortable,” he said, “if there were more safeguards.”

An Increased Risk

Most people with mental health issues, of course, will never be violent. But there is widespread consensus among scientists that the increased risk of violence among those with a serious mental illness — schizophrenia, major depression or bipolar disorder — is statistically significant. That risk rises when substance abuse, which is more prevalent among people with mental illness, is also present.

One frequently cited [study](#), led by Jeffrey W. Swanson, an expert on mental health and violence who is now at Duke University, showed that 33 percent of people with a serious mental illness reported past violent behavior, compared with 15 percent of people without a major mental disorder. Violent behavior was defined as including acts ranging from taking part in more than one fistfight as an adult to using a weapon in a fight. The rate for those with substance abuse issues but without a serious mental illness was 55 percent. The highest rate, 64 percent, was exhibited by people with major mental disorders and substance abuse issues.

[Other studies](#) have concluded that additional factors significantly increase the risk of violence among people with mental illness, including exposure to violence and being a victim of violence.

But taking these data and applying them to individuals is profoundly difficult.

Scientists have concluded that it is most accurate to augment clinical judgments with an “[actuarial](#)” [approach](#), in which variables like psychiatric diagnosis, history of violence and anger control are plugged into a risk assessment model. The models categorize people into higher and lower risk groups. But many clinicians are unfamiliar with the technique. Indeed, none of the doctors who wrote letters on behalf of their patients in cases The Times reviewed appeared to utilize the approach.

Doctors’ declarations clearly influenced judges. But most wrote their letters at the request of their patients, which Randy Otto, a former president of the American Board of Forensic Psychology and an associate professor at the University of South Florida, said can be problematic.

“They’re more subject to pressure from their patients to offer opinions that will help the patients get what they want,” Dr. Otto said.

He said many doctors, particularly those not in the mental health field, are probably not steeped in the most important clues to future violence. Even psychologists and psychiatrists, relying on their clinical judgment alone, are extremely unreliable in predicting violence, studies have shown.

“Unstructured clinical judgments, just judgments of mental health professionals about how risky someone is,” Dr. Otto said, “are probably the least reliable and the least accurate.”

Weighing the Threats

The difficulties of predicting violence are particularly striking in Los Angeles County, where the Superior Court has a relatively rigorous process for determining whether to restore gun rights.

In California, anyone placed on a 72-hour or 14-day psychiatric hold and determined to be a danger to themselves or others loses gun rights for five years. But upon discharge, the person can apply to have these prohibitions lifted. Applicants in Los Angeles County are required to provide records from all involuntary hospitalizations, which are checked against a list provided by the State Department of Justice. They must also be examined by a court-appointed psychiatrist, who can call friends or relatives to gather more information.

Under the [statute](#), the burden is on the district attorney to establish that the petitioner “would not be likely to use firearms in a safe and lawful manner.”

Over all, 1,579 petitions have been filed in Los Angeles Superior Court since 2000. More than 1,000 were dismissed, usually because applicants did not furnish the required documentation or failed to show up. Of those who actually got hearings, 381 won their cases.

“Dealing with somebody who suffers from severe mental illness and mixing that with firearms, you really have to cross the t’s and dot the i’s,” said Richard J. Vagnozzi, a deputy district attorney who handles these cases. Mr. Vagnozzi said the process “isn’t perfect, but we do the best we can with the available data and what we’re allowed to do.”

Even with the vigorous checks, there are people like Afshin Poordavoud, who lost his gun rights in June 2000. During a heated argument with his brother, Mr. Poordavoud threatened to shoot himself. His brother called the police, and Mr. Poordavoud was hospitalized briefly, according to court records.

Several months later, Mr. Poordavoud petitioned to have his firearms rights restored and to have the police return his shotgun and 9-millimeter semiautomatic handgun. A court-appointed psychiatrist recommended that the decision be put off for three months and that Mr. Poordavoud get a full psychiatric evaluation and treatment, pointing out that the hospital had found him to be “likely depressed and minimizing his level of depression and suicidal risk.”

Mr. Poordavoud returned to court three months later with a letter from a therapist, indicating he had been undergoing treatment. This time, a different psychiatrist examined him but wrote at the end of his report, "Inconclusive: I have no opinion." The psychiatrist suggested that the case be referred back to the initial doctor so she could interview Mr. Poordavoud's therapist and obtain the full file from his hospitalization.

The judge, however, granted Mr. Poordavoud's restoration request that same day in a pro forma hearing.

In late 2004, Mr. Poordavoud drove up to a house in Chatsworth, Calif., in the middle of the night and began banging on the windows and the doors, shouting for an acquaintance to come out, according to court testimony.

When a man opened the door, Mr. Poordavoud sprayed him and two others with mace, according to court testimony. In the ensuing fight, Mr. Poordavoud slashed at one of them with a pair of brass knuckles fitted with blades.

Mr. Poordavoud retrieved a gun from his car and fired a single shot that missed. In an interview, he said he had only fired in the air in self-defense.

The police eventually charged Mr. Poordavoud with multiple felonies. He pleaded guilty to assault with a deadly weapon and using tear gas not in self-defense, and he was sentenced to about a year in county jail.

"I had an anger problem," said Mr. Poordavoud, who is no longer allowed to have guns because of his felony record. "I still have an anger problem."

Violence against others is not the only concern.

Ryan Anthony, the talented but troubled Disney artist who had a history of alcoholism, had talked about suicide for years with relatives. His father, Michael Anthony, said his son once threatened to jump off a highway overpass; another time, he vowed to hang himself from a chandelier in his home. A few months before he filed his petition to restore his firearms rights, he had attempted suicide by swallowing some pills, said his brother Loren.

But Mr. Anthony was able to hide his troubled past when a court-appointed psychiatrist examined him for the restoration hearing in April 2002. He told Dr. Rose Pitt, according to court records, that he had simply been going through a difficult period after he lost his job and split up with his wife. He was normally not a drinker, he said, but began drinking heavily. Since

his involuntary hospitalization in mid-2001, he had been sober and attending Alcoholics Anonymous meetings, Dr. Pitt wrote in her report.

“Does not own guns but wants to skeet shoot, and so wants to purchase guns,” Dr. Pitt wrote. “There does not appear to be any contraindication to his being able to get guns.”

His relatives were incredulous. Had they been called, they said, they would have told officials to deny his request.

“I would have said, ‘No, that doesn’t sound right,’ ” Loren Anthony said. “He didn’t like guns.”

Mr. Anthony had been staying with Steven and Sofia Shafit, family friends. They said he had been doing better but was still hurting.

About two weeks after he got his firearms rights restored, he borrowed \$300 from Ms. Shafit, saying he wanted to take a girl on a date. Instead, he went out and bought a shotgun — investigators found the receipt by his body — and checked into a room at a Holiday Inn.

On the desk, he left a three-page suicide note, according to a report from the Los Angeles County coroner’s office. At some point, he lay down on the bed, placed the barrel of the shotgun in his mouth and pulled the trigger.

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